

1.2.5. *Certainly, K. O. L. few  
presentations have seen*

# Keep Radio for the People



WHITE-WHEELER BILL, "CHAIN MONOPOLY,"

and

REGULATIONS OF  
FEDERAL COMMUNICATIONS COMMISSION

reviewed by

AN INDEPENDENT (LICENSEE) RADIO  
STATION OWNER

LIBRARY  
UNIVERSITY OF ILLINOIS  
URBANA

By

J. FRANK BURKE, Attorney,

President, PACIFIC COAST BROADCASTING CO.,

KPAS, An Independent Broadcasting Station





# OAK ST. HDSF

Return this book on or before the  
**Latest Date** stamped below. A  
charge is made on all overdue  
books.

University of Illinois Library

JUN 10 1946

MAR 19 1990

APR 29 1947

MAY 19 1947

DEC 20 1947

DEC 29 1949

JUN 8 1951

APR 12 1956

APR 26 1956

MAY 18 1956

MAY 25 1957

JUL 06 1990

M32—30715









384.5  
B91k

**THE WHITE-WHEELER BILL, A PROPOSED  
AMENDMENT TO THE COMMUNICATIONS  
ACT, WHICH WOULD TAKE THE  
CONTROL OF RADIO FROM REPRESENTATIVES OF THE PEOPLE  
AND TURN IT OVER TO  
THE LICENSEE**

To the Members of Congress, and particularly the Inter-State Commerce Committee:

There is before your body Senate Bill 814, introduced by Senator White and Senator Wheeler. I understand a companion Bill has been introduced in the House. This Bill relates to the powers and prerogatives of the Federal Communications Commission, being an amendment to the act creating that Commission, and defining its powers.

**The Program of Misrepresentation of the  
Facts concerning Radio Control**

1243  
dir. of  
June 4, 1934  
Boyd

A recent decision of the United States Supreme Court, sustaining the Federal Communications Commission in certain regulations which it had established for what it believed to be in the public interest, has challenged and aroused great opposition to these regulations and the powers of the Commission. On this decision a large amount of editorial comment has been made, and very severe criticism has been directed against the Commission for promulgating these regulations. The net result would tend to bring support to this particular Bill as being calculated to correct what is alleged to be the usurpation of powers and wrong attitudes taken by the Commission under the law.

**Qualifications of Writer to Discuss the Question**

I have been a publisher for years, an editor, and a radio commentator, and have been watching and working with the development of radio and broadcasting for more than a decade.

I am appealing to you because I am certain that the sentiment which is being created against the Commission is being created on false premises. There is being erected a dummy objective so that through the process of appearing to knock it down, certain objectives can be obtained. These objectives are against the public interest in my opinion.

### **Object of Amendment to Prevent Protection of the People**

The object of the whole campaign, including the use of this Bill, is to prevent the service of the Commission being used to protect the public and enable certain ones to continue abuses, which have been injuring radio as an institution of public benefit through various ways, especially in denying the public the greatest possible benefit of the industry.

### **No Defense of Commission Required, but the People's Interest in Peril**

I am not primarily interested in defending the Communications Commission from any act relating to this subject matter whatever. It is abundantly able to care for itself. I know that in a democracy those who are clothed with the authority to administer law are always in the position of targets for critics, and we must not complain. Through frank and clear criticism facts are brought out, the people are informed, and our servants in a commission are thereby constantly reminded that they are the servants of the people. The criticism that brings this about, I recognize, is a very desirable form of democracy's activity. I do not present my statement to you, therefore, as an advocate of the Commission. I present the matter to you as one interested in the greatest possible usefulness for the radio industry. I am speaking as one engaged in the industry of broadcasting, as a citizen, an investor, and an editor. I am speaking as one recognizing his own trusteeship, which has been afforded through the license to use a



broadcasting band by the Commission, which is clothed with such authority. I am a believer in the right of free speech for the public and an opportunity to use the radio by the citizens of the nation with the highest degree of freedom.

### **Necessity of Control of Radio for Public Service**

The law under which the Federal Communications Commission operates, and to which this Bill before you is proposed as an amendment, recognizes the necessity of the control of radio by some centralized power on behalf of all the people. Without such a control of the facilities of broadcasting, no one would be able to use them. If anarchy and chaos in the operation of the air frequencies would not result through every individual's using such media for expansion of his own private right of free speech, it would be an ideal condition; for the right to use this medium certainly belongs to the people themselves. It was in recognition of this right, and in order that it might be used on behalf of the people, that the law was passed creating this body of men whose business it is to protect the interest of the people against the natural aggrandizement of those of us engaged in the industry. We all have a tendency, and some of us deliberately plan, I am afraid, to take the power of the people and use it primarily for our own financial gain, getting a corner, or monopoly, as nearly as possible, on all the facilities.

### **Power of Control Inherent in the People and Should Rest in Body Divorced from a Financial Interest in the Use of Radio for Profit**

There can be no question that the power to regulate and control is inherent in the people in view of the fact that a *control is necessary for the use of radio. The real question before your Committee, which is brought out by the content on this Bill, is whether that power of control can more safely be reposed in the hands of a Commission than left in control of*

*the licensee, whose interest is primarily commercial. Is it better under the direction of a body of men who have no financial or personal interest, or connection of financial gain in broadcasting; or can it best be protected and directed in the public interest by those who are financially interested through investment?* **There are those who aim to gain control, and who are building up a great financial institution with the broadcasting facilities. They aim to avoid any responsibility to any authority representing the general public as far as it is possible for them to do so and gain the facilities.**

A secondary question that is raised by this Bill and by the decision of the Supreme Court is whether the Communications Commission's regulation on chain broadcasting is in harmony with the public interest. I submit to you in the very opening that this is a secondary question because it goes to the ability of the men and simply presents the problem of whether there should be a change in the personnel, whether the men are fitted for the positions of trust to which they are appointed. Personally, I believe they are; but we are not discussing the personalities of these men here.

I do not believe there is necessity to dwell more than a moment upon the idea that the public interest can best be served by men having charge of this great utility who themselves have no other obligation than that of the public interest. They are paid from the treasury to perform the duties which must be our real object in this department of democracy. The other men, the licensees, are those who are conducting their enterprise for private profit, for themselves, and their stockholders; and they have, at best, a conflicting interest. More than this, to take power of control from a disinterested and central body and turn it over to hundreds of licensees, destroys a unity of procedure as well as of protection to the people, and it would be found that a practise that is not permitted in one place would be perfectly proper in another. I assume that



it will be recognized by the members of this Committee, and by the members of Congress generally, that an impartial non-financially interested group of men, therefore, must have charge of the conduct and use of radio in this country.

### **Licensee Really a Trustee or Steward of Expressed Trust, and Control of the Business of Radio for the Public Interest No Cause for Complaint**

However, it is urged on behalf of this Bill and is developed as a criticism growing out of the decisions of the Supreme Court, that granting or permitting this Commission to have power over certain contracts and business relationships gives to it an unfair and wrong control over the industry. There has been no reason for such a contention. Nothing has been done to justify it.

Gentlemen, I contend on two grounds that this is an entirely wrong conclusion for any man, or men, to reach. First, I would remind you that not one of us has a right to one of these wave lengths as against any other human being. The right to a particular broadcasting band does not exist in the individual because he could not exercise that right as against society. Society, through law, through legislation enacted by your honorable body, representing all the people, must be served in a method of allocating these broadcasting privileges and then selecting from the multitude of men and women applying for such privileges, those who shall be the beneficiaries of the grant.

Let us, however, make no mistake that that continues to be a privilege which is granted by the people through the operation of law. It does not become a right simply by the investment of our money in the facilities to carry on our privilege which has been granted. We must recognize, and your honorable body should recognize, that we who are licensees are trustees of these rights of the people; and because of the frailty of human nature, and the likelihood of changes in the



attitude of men, there are limitations placed upon the granting of such privilege. It must be granted only for a given period, a specific time. There must be from time to time a re-examination of our trusteeship, or stewardship, to see whether we continue to be worthy of such a high privilege. And this grant, even for the brief period, is understood thoroughly to be predicated upon our observance of the general rules and practices that have been laid down for what has been considered to be in the public interest. The denial of a man a license or the changing of conditions under which he shall operate that license is not denying him any property or personal right and, I believe, is in accordance with the decisions of the Supreme Court.

### **Only Question To Be Raised Is That of the Personnel of the Commission, Not the Question of its Powers**

The only question that could be raised before the Court would be whether in the discretionary power which is given to the Commission in regard to granting licenses or withholding them, there has been such an abuse of that power that it could come within the purview of the Court. An abuse of that power, of course, would exist if any action were taken by the Commission merely for personal reasons or in caprice. If there should be an attempt to take the license from one and give it to another, without any evidence of its being for the public interest, without the loser having violated any rule or regulation laid down, and who in harmony with all those rules and regulations had made an investment upon which he would have good reason to suppose that his license would at least be continued for the period for which it was granted, the case might probably be reviewed by the court.

### **License Only a Privilege**

What I am emphasizing, however, is that the licensee has no rights in that license as such. He does not own it. It be-

longs to the people. He has been selected for the sacred job of trustee or steward of it for the brief period of two years time, and then on condition that he conducts it in a manner worthy of a trustee. He is protected only against the abuse of discretionary power of the Commission, which is all he has a right to expect.

### **Necessity of Specific Elements of Contracts and Business in Control of Commission**

Then, again, this central Commission must have power to prevent the licensee's losing his prerogatives and power which have been granted by the Commission to conduct that station constantly in the public interest in the very community to which the license has been accredited. This makes it obligatory upon the Commission to prevent leases and contracts, associations and control, under the provisions of which the licensee had been divesting himself of the control of his own broadcasting station prior to the regulations laid down by the Commission which provoked this controversy. Under certain conditions which he was establishing, he no longer could control either what was put on or taken off his station, or control the time of his station under the license that he has from the people through the Commission.

**The minute a contract is made between him, for example, and a group of men who have built up a chain broadcasting system, by which, in any manner, he ceases to be able at any time within his license period to control his station, he has clearly attempted to delegate power that was granted to him, after due examination, to others who have not received that license privilege. This the Commission has forbidden, and this the proposed amendment to the present law would again permit.**

## **Powers of Licensee Cannot Be Delegated by Agreement or Contract and Still Have the People's Rights Protected by Their Government**

The members of your honorable body have been elected to perform certain service. Under the Constitution and the law, you have the privilege and the right to delegate certain powers; but certainly a licensee to conduct a radio station could not be, by the very nature of the case, clothed with power which he could delegate, and still have society through government continue in complete control. **And, gentlemen, there is no violation of any property or personal right in this attitude because the man who has accepted this privilege has done so with a clear understanding that the public interest is the chief consideration. He makes his investment, as I have made mine, with that idea regnant throughout. I can refuse to apply for a construction permit to construct a radio station, or I can apply; and after a construction permit is granted, I can still refuse to go on and invest my money on the basis of that privilege. There is no one who is deceiving me about it; nobody is trying to get my money through false representations. When I have accepted the construction permit, however, and invested my money, I do so as a steward or trustee, knowing that I cannot follow my own wishes, my own desires, and my own will, in regard to this investment. I have invested it subject to the public interest. The judgment of what conduct shall be considered in the public interest is vested by law in the Commission. In no other place could it be lodged, and the public be protected.**



## **Purpose of This Amendment to Remove the People's Protection**

By this amendment these men are planning to remove the conditions that must be imposed on a public radio, and have it treated as an investment as though it were a farm, an automobile, or a grocery store. They do not propose to have their investment subject to control by the public interest, determined by men regularly selected for that purpose. **The remedy for their state of mind should be for them to dispose of their interest in radio and invest in something not so connected, and to which personal and absolute control there could be no objection.** Certainly, I do not feel, as an investor and a licensee of radio, that it lies within me to complain that any rights are interfered with when all the way through I made my investment with that definite understanding and with the law clearly before me.

Now note, gentlemen, how the entire power to insure the public the highest protection in the use of the radio is taken from the men appointed for that purpose. I should like to quote to you that part of the Bill that is designed to accomplish and would accomplish, this purpose.

## **Portion of Bill Which Would Accomplish Destruction of Necessary Control by Society**

“Nothing in this Act shall be understood or construed to give the Commission the power to regulate the business of the licensee of any broadcast station and no regulation, condition, or requirement shall be promulgated, fixed or imposed by the Commission, the effect or result of which shall be to confer upon the Commission supervisory control of station programs or program material, control of the business management of the station or control of the policies of the station or of the station licensee.”

Could protection of the public be more completely and effectively destroyed in any conceivable manner than by the enactment of this provision? It removes all restraints and

affords the public no protection whatever. **Now, gentlemen, if this were passed, the licensee of a broadcasting station could enter into contracts and deals and policies that were absolutely contrary to the public interest, and there would be no authority to prevent it; and, indeed, there is no doubt in my mind that that is the very purpose of this amendment.**

Let us take an incident wherein the regulation by the Commission was laid down and sustained by a Supreme Court decision to illustrate the necessity of the protecting power of the public interest being lodged in the Commission and not taken from it. Read this carefully. If this amendment were adopted, such practices as are herein described would continue, to the loss of the public.

### **Necessary Business Control by the Commission Upheld by Supreme Court**

In order to get this issue clearly before you, I want now to quote from the opinion and decision of the Supreme Court concerning one incident in which the Commission had to interfere with the contract of business of the licensee to protect the public. Quoting from the Supreme Court decision:

"Regulation 3.101—Exclusive affiliation of station. The Commission found that the network affiliation agreements of NBC and CBS customarily contained a provision which prevented the station from broadcasting the programs of any other network. The effect of this provision was to hinder the growth of new networks, to deprive the listening public in many areas of service to which they were entitled, and to prevent station licensees from exercising their statutory duty of determining which programs would best serve the needs of their community.

### **Fair Chance of Public To Hear Best Programs Established by Commission**

"The Commission observed that in areas where all the stations were under exclusive contract to either NBC or CBS, the public was deprived of the opportunity to hear programs presented

by Mutual. To take a case cited in the Report: In the fall of 1939 Mutual obtained the exclusive right to broadcast the World Series baseball games. It offered this program of outstanding national interest to stations throughout the country, including NBC and CBS affiliates in communities having no other stations. CBS and NBC immediately invoked the 'exclusive affiliation' clauses of their agreements with these stations, and as a result thousands of persons in many sections of the country were unable to hear the broadcasts of the games.

## **Why and How Public Interest Defeated by Action of Chains and Reinstated by Commission in Its Regulations**

"'Restraints having this effect,' the Commission observed 'are to be condemned as contrary to the public interest irrespective of whether it be assumed that Mutual programs are of equal, superior, or inferior quality. The important consideration is that station licensees are denied freedom to choose the programs which they believe best suited to their needs; in this manner the duty of a station licensee to operate in the public interest is defeated. . . Our conclusion is that the disadvantages resulting from these exclusive arrangements far outweigh any advantages. **A licensee station does not operate in the public interest when it enters into exclusive arrangements which prevent it from giving the public the best service of which it is capable, and which, by closing the door of opportunity in the network field, adversely affect the program structure of the entire industry.**' (Report, pp. 52.57.)

"Accordingly the Commission adopted Regulation 3.101, providing as follows: 'No license shall be granted to a standard broadcast station having any contract, arrangement, or understanding, express or implied, with a network organization under which the station is prevented or hindered from, or penalized for, broadcasting the program of any other network organization.'"

## **The above is The Reasoning of the Supreme Court**

Now this is one of the regulations from which an injunction suit was brought on the ground that the Commission was misusing its discretionary power and interfering with the business of a licensee. It is similar in type and character to all of the other regulations that were laid down by the Commission



and were sustained by similar reasoning by the United States Supreme Court. I submit to you that the practise that was here corrected of a licensee entering into arrangements to prevent the public's getting a particular service is manifestly contrary to the public interest, and that the provision in this amendment to the law proposes clearly to divest the Commission of power so to protect the public interest. Note how this amendment to the law practically says to the licensee, "The license is yours; the public has no rights that you are bound to respect."

### **Alternative To Control by Commission Is To Have No Power of Control Anywhere Except in Those Whose Primary Object Is Personal Profit**

If this amendment were passed, there would be no corrective power anywhere. The power would rest with the licensee to do as he pleased with his station; and in respect to the networks, or chains, as they control 97% of our night time power, we would find that the power to control these stations would be in the hands of a small group with which these individual associate stations had made this contract. In addition to the networks mentioned in the decision quoted above, other networks have exclusive contracts for broadcasting public service programs, and these contracts also frequently eliminate the station accredited to a particular area.

### **Financial Interest, Not Public Interest Would Then Control**

We would then have the power of control vested in a group which in no way was responsible to the public, and over an institution belonging inherently to the public, and from which the public can gain benefit only by keeping the control in its own hands through its own representatives.

## **All Functions in Radio Can Be Carried On with the Necessary Regulations Laid Down by the Commission**

**There is no legitimate function that radio should fulfill that cannot be fulfilled under all the rules and regulations that can be laid down by the Commission for the protection of the public, as in this incident that I've just related.** There were numerous similar regulations that were sustained by the Supreme Court; and immediately as the result of that decision, a hue and cry was set up that this decision granted powers that did not appear in the law, and under which free speech over the radio would or could be denied.

## **Absolutely No Interference with Free Speech in Regulations of Commission or Decisions of Court**

There is nothing in this decision that could possibly be tortured into any such construction, or from which any such implication could be drawn. The only thing that was before the court were certain regulations between the licensee and the chain which protected the communities in certain benefits from radio which the contract between the chain and the individual licensee would take away from them. It gave no power to the Commission which was not in the law itself, and I am sure that as one studies this charge that the decision of the Supreme Court grants power to the Commission to deny free speech, one will find that so far from its being true, as a matter of fact, it is only through the protecting care of the Federal Communications Commission that the people of this country can enjoy the privileges of free speech through the means of radio communication.

## **Plain Provision of Present Law Gives Absolute Lie to Charge That under Decision, Commission Could Deny Free Speech**

The truth of the matter is that this charge is a charge contrary to reason, for the act itself which granted the power to the Commission, the exercise of which by its regulations was sustained by the Supreme Court, uses this language in section 326. "Nothing in this act shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by the means of radio communication." This is the law now, and it is reincorporated by this amendment. There is nothing more certain than a decision of the Supreme Court would be in denying the right to a Communications Commission to issue any regulation that would interfere with free speech. The prohibition of business connections and contracts that would deny to a community the privileges of the radio, which the Communications Commission has avoided by its own regulations, instead of being an interference, is an assurance and a protection of free speech.

## **Showing Charges of Denial of Free Speech by CBS and NBC Are Insincere Because Free Speech Practically Denied by Code of NAB**

But, in addition to this, gentlemen, as evidence that there is no sincerity in the pretended effort to protect the people from the supposed bugaboo of interference with free speech by the Commission, I would call your attention to some other very pertinent matters.

The National Association of Broadcasters has been gathering together material consisting of editorials and comment on the abridgement of freedom of speech over the radio, based



largely upon this decision of the Supreme Court. In many of these comments there is indication that the writers have not read the decision of the Supreme Court completely; certainly, many of them have not read it in connection with the law because they have not been emphasizing that these acts themselves suppress free speech, but that it might be suppressed by the Commission through the decision of the Supreme Court, which shows that they did not read the law; for the law expressly forbids any such condition.

### **Pretending To Defend Free Speech, They Strangle It**

But, more than this, those who are responsible for the gathering together of these adverse opinions and the combining of them for propaganda purposes, have themselves laid down a code which, under the guise of appearing to initiate and promote free speech over the radio, really eliminates it almost in its entirety. I want to discuss that briefly because it has a direct bearing upon this whole question and shows clearly the impossibility of a man's getting a right for the presentation of his ideas over the radio in any other way than through such an institution as the Federal Communications Commission.

### **How They Strangle It by Praising It**

Now I want to quote from a circular entitled, "The Code of the National Association of Broadcasters," amended up to as late as April, 1943. I call your attention to the paragraphs under the heading, "Controversial Public Issues," and I will quote:

**"As part of their public service, networks and stations shall provide time for the presentation of public questions including those of controversial nature.** Such time shall be allotted with due regard to all the other elements of balanced program schedules and to the degree of public interest in the questions to be presented. Broadcasters shall use their best efforts to allot such time with fairness to all elements in a given controversy.

**"Time for the presentation of controversial issues shall**

**not be sold, except for political broadcasts.** There are three fundamental reasons for this refusal to sell time for public discussion and, in its stead, providing time for it without charge. First, it is a public duty of broadcasters to bring such discussion to the radio audience regardless of the willingness of others to pay for it. Second, should time be sold for the discussion of controversial issues, it would have to be sold, in fairness, to all with the ability and desire to buy at any given time. Consequently, all possibility of regulating the amount of discussion on the air in proportion to other elements of properly balanced programming or of allotting the available periods with due regard to listener interest in the topics to be discussed would be surrendered. Third, and by far the most important, should time be sold for the discussion of controversial public issues and for the propagation of the views of individuals or groups, a powerful public forum would inevitably gravitate almost wholly into the hands of those with the greater means to buy it.

"The political broadcasts excepted above are any broadcasts in connection with a political campaign in behalf of or against the candidacy of a legally qualified candidate for nomination or election to public office, or in behalf of or against a public proposal which is subject to ballot. This exception is made because at certain times the contending parties want to use and are entitled to use more time than broadcasters could possibly afford to give away.

"Nothing in the prohibition against selling time for the presentation of controversial public issues shall be interpreted as barring sponsorship of the public forum type of program when such a program is regularly presented as a series of fair-sided discussions of public issues and when control of the fairness of the program rests wholly with the broadcasting station or network."

### **Free Discussion of All Controversial Questions Out, Except as the Licensee or Network Shall Select the Time, the Place, and the Topic To Be Discussed—The Public Voice Is Gagged**

Now I call upon you to examine carefully the above statement. It looks like a very fair statement on behalf of the discussion of controversial public questions; but if you will note, there is no opportunity afforded for such discussion. Indeed, the opportunity to discuss controversial questions is definitely eliminated except as the occasion, and the time, and the subject,

are determined by the licensee. This is a definite program laid down by the National Association of Broadcasters.

### **How the Gag Works**

No man is permitted under these rules to present a controverted question that needs continuous information and education over such stations as are governed by these rules, even though he is willing to pay for it. A labor union, desiring to carry on a program to appeal to the public on its own behalf and present its own case, cannot do so unless, perchance, the broadcasting station will put it on once as a sustaining program, and then have somebody reply thereto. Every person of intelligence knows that the only worth-while questions for public discussion are those with two sides to them, spoken of as controversial questions.

Two separate labor unions have each had, and one of them still has, a nightly program over my station. They pay for such time. Anyone can reply to them who desires to employ such time. As a matter of fact, the ones who are usually opposed to new ideas which might disturb the status quo are those most able to pay for time. The ones who have new points of view, reform ideas, are denied an opportunity to make such changes as they believe in the common good, which are dependent upon informing and educating the public, because of this rule which makes the controversial questions limited to time which radio stations will give, and limited in the subject matter's having to be in harmony with what the radio station desires to have the public listen to. It's all under the guise of furnishing an opportunity for free speech. It is clearly denying it.

### **Exception Only in Campaigns, and Then Handicapped**

They do make an exception, as you will note, in campaign time on initiative or referendum questions, or on candidates.



But, mark you, even in such cases they hold themselves in readiness to deny both sides a hearing; for the only case in which they are compelled to hear a candidate is when they have accepted a program of an opposing candidate for the same office. Many individuals and many groups in our democracy, at great sacrifice to themselves, are so profoundly impressed with the truth of a new idea that they are willing to pay broadcasting stations for the privilege of regularly presenting it to the people.

### **Only Chance of Free Speech Is Through Stations Which Refuse To Be Bound by Code of NAB**

Under these rules, they are all denied such opportunity; and were it not for the fact that some of us have a higher conception of the uses of the radio than this, and have not subjected ourselves to such rules and regulations, these people would have no opportunity whatever to present their points of view to the public in any systematic or regular manner.

### **Personal Testimony to Freedom Afforded by Federal Communications Commission and Denied by Networks**

I can testify that after many years of constant and independent editorial discussion over my radio station, on every conceivable political, public, economic, and social question, never has there been the slightest interference or suggestion from the Federal Communications Commission that there was any danger of any limitation being placed on any such discussion. So far from this being a case where the speaking has been on behalf of the administration, I want to say to you that on numerous occasions have I discussed adversely, not only many acts of our national administration, but acts of the Commission itself.

On one occasion in the attempt of the adoption of an oil control bill in our state, which was supported by a democratic governor, by the President of the United States, by the Secretary

of the Interior, the Secretary of War, and the Secretary of the Navy, I opposed it, speaking daily against it for several weeks, and was considered highly instrumental in defeating it by a very large majority. Yet I have never received a solitary word of criticism in respect to the position taken, or to my right to speak over my own radio in such a discussion.

I want further to say that when I attempted to speak over a chain of stations in the state on the same subject, even though it was during a campaign, my script was censored; and I was unable to identify a corporation responsible for certain acknowledged facts.

### **A Few More Serious Mistakes for Amendment**

I am confidently of the opinion that whatever may be in the minds of those who introduced Senate Bill 814, these amendments for the most part are opposed to public interest, as I've pointed out, and there is an attempt in much of the material that is sent out in support of this measure to mislead and misinform the public in respect to the intent of some of these provisions, and the effect they would have if passed.

I shall call your attention briefly to a few more of the outstanding mistakes in this Bill. Section 5 provides that the Commission shall be guided, not by the public interest, convenience, or necessity alone, but there shall be added the question as to whether it will aggrieve or adversely affect the interest of any licensee or applicant. In that case, the rights of individuals, of which there really are none by the very nature of the case, shall be able to delay and irritate the whole proceedings.

There is an emphasis upon the idea that there is property interest in a license, which the whole tenor of the law and the nature of the issue would deny. In paragraph D of Section 5, there are provisions inserted that have already been taken care of by the decisions of the Supreme Court; but the language evidently is used there to impress upon those whose votes are

desired that they are covering the provisions that the Supreme Court covered, when, as a matter of fact, they leave out the essence of the case, which is their attempt, by contract, without any transfer of their license, to defeat the purposes of their being licensed.

### **Protection Slight and Unreal**

In Section 315 where the public might be protected in its right of freedom of speech and be assured of the right to present its claim over the radio, there is only the provision that on condition a public official desires to speak and is granted such permission, his opponent shall have such right. That is all there is of any protection of free speech in this measure.

### **Defining Conditions for Public but Limiting Its Rights**

Again in Section 9, there would be provided by this amendment a provision making certain requirements of applicants before they can be heard over a radio station. Again, however, no opportunity is afforded, or assurance given, to anyone that he can have any right over the radio. The only right that I can see that is granted to anyone is in case a public officer is permitted to use a radio broadcasting station for the discussion of a public or political question, the licensee of such a station shall afford a right of reply to any person who is an accredited representative of the opposite political party or parties.

### **Right of Public To Be Heard Should Be Effectually Provided**

This, in its apparent attempt and pretense of giving some equality before radio is ridiculous, and it is so because there is no other provision in the law giving a man the right to be heard. If there were the right of free speech, as there ought to be over our broadcasting stations, one who is endeavoring to advance economic, social, or political ideas would and should be permitted to strengthen his position by calling upon men of like ideas, whether they are of one party or another; and



if anyone is in sufficient disagreement, under a free speech radio he could hire like time in any case.

Again, in Section 11, there is an attempt to appear to stand for free speech by denying censorship powers to the licensees, but in view of the fact that there is no compulsion possible for any applicant to be heard over the radio station, except as the licensee is willing, and desires, and will permit him to be heard, you are denying censorship to a man who already has the power, without interference, to deny the man the right to speak at all.

### **Whole Measure Would Only Help to Thrust Monopolistic Practises upon the Radio Industry**

The result of the enactment of this Bill clearly would be to take the power from the Congress and its agency, the Federal Communications Commission, the representatives of the people, who have been insisting that radio be conducted in the peoples' interest, and turn it over to the licensee, who in reality and in justice should hold his license as a trustee or steward, subject to the rules and regulations that are laid down by the representative body selected for that purpose. It is the obligation laid upon the Commission to see that all radio stations are conducted in the public interest, and that no contract or extensive program is entered into that would prevent the interest of the public from being at all times possible of expression.

This expression is now amply provided for, and a transfer of power will aid only in the monopolistic practises which are contrary to the interest of the listening public; for do not forget that 97% of all our night power on radio now is in network control.

















3 0112 061939846